

United States District Court

Northern District Of California

Before The Honorable William Alsup

United States of America, )

)

Plaintiff, )

)

vs. )

NO. CR05-611 WHA

)

Dale Heineman and )

Kurt Johnson, )

)

Defendants. )

)

San Francisco, California

Tuesday, June 10, 2008

**Reporter's Transcript of Proceedings**

**Appearances:**

For Plaintiff:

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United States Attorney

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Dale Scott Heineman

#12152-081

FCI Dublin Correctional Facility

5701 8th Street,

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In Propria Persona

(Appearances continued on next page.)

**Reported By:**

**Sahar McVickar, RPR, CSR 12963**

**Official Reporter, U.S. District Court**

**for the Northern District of California**

**Appearances, continued:**

For Defendant:

Kurt F. Johnson:

Kurt F. Johnson

#13177-081

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Tuesday, June 10, 2008

3:00 p.m.

P R O C E E D I N G S

**THE CLERK:** Criminal No. CR05-611, United States  
versus Dale Heineman and Kurt Johnson.

**MS. MARTIN:** Good afternoon, Your Honor.  
Brigid Martin and Dave Hall for the United States.

**THE COURT:** Welcome back.

**MR. HALL:** Thank you, Your Honor. Good afternoon.

**THE COURT:** Good afternoon.

**MR. TAMOR:** Good afternoon, Your Honor.  
Richard Tamor appearing as advisory counsel.

**THE COURT:** How are you today, Mr. Tamor?

**THE PROBATION OFFICER:** Good afternoon, Your Honor.  
Benjamin Flores from Probation.

**THE COURT:** Mr. Heineman and Mr. Johnson.

**DEFENDANT HEINEMAN:** There you are. How are you?

**THE COURT:** I'm fine.

All right, we are here on -- for a hearing to  
determine the amount of restitution. I did receive the  
Government's memorandum that comes out to a dollar amount of  
499,000 -- what is the exact amount?

**MS. MARTIN:** Actually, I don't know if that is the  
one that I filed. You may have an earlier version.

**THE COURT:** All right.

**MS. MARTIN:** I have one I filed here. It's the

1 first document in the binder. The total dollar amount is  
2 \$512,911.63.

3 **THE COURT:** Okay, \$512,911.63; in other words,  
4 slightly more than half a million dollars.

5 This would be -- to be paid to a list of 20 victims,  
6 starting with Bank of America and Peggy McCay, going down to a  
7 list of others.

8 **MS. MARTIN:** And, I've also brought copies of that  
9 memorandum and the victim statements for the defendants to use  
10 in court, if they would like to, for their convenience.

11 **THE COURT:** All right.

12 **DEFENDANT JOHNSON:** Considering we have never seen  
13 that stuff, that would probably be great.

14 **MS. MARTIN:** Okay. I did mail it out on Thursday to  
15 the jail. There is a possibility that they didn't receive it.  
16 I --

17 **DEFENDANT HEINEMAN:** We pretty much haven't received  
18 mail from the day we left here.

19 **THE COURT:** Well, let me give you a moment then.  
20 This is not -- despite the fact that it looks very thick, it's  
21 actually not that long. If you would like to take these copies  
22 back, the marshals would let you review these. And then, we  
23 could come back and resume the hearing later in the afternoon.

24 Would you like to do that?

25 **DEFENDANT JOHNSON:** I would like to take a look at

1 it, since I haven't seen it.

2 **THE COURT:** All right. It's now 2:15 --

3 **MS. MARTIN:** Your Honor, can I say one other thing,  
4 just to clarify?

5 **THE COURT:** Yeah, sure.

6 **MS. MARTIN:** Most of the documents that are in the  
7 binder I sent to the defendants when they were incarcerated at  
8 Stafford and Lompoc over the last few months. So, these  
9 documents should not all be new to them. On most of the  
10 victim's statements I sent redacted versions.

11 **THE COURT:** Thank you for that.

12 Basically, this is a four-page document with a lot  
13 of attachments we've all seen before. So why don't we -- can  
14 you come back in 30 minutes?

15 **DEFENDANT JOHNSON:** Yep. I just would like to put  
16 on the record, too, when you guys shipped us out, we have been  
17 totally separated from our legal materials and mails. So we  
18 don't know shit from Shinola. You see us coming here with no  
19 paperwork; we haven't had access to nothing.

20 **THE COURT:** I -- right now, I just have one motion  
21 to deal with, and I want to give you the time that you need to  
22 deal with this motion. So, why don't you -- I would ask the  
23 marshals to bring you back here in a half an hour. I think, in  
24 my judgment, that ought to be enough to deal with this motion.  
25 All right?

1           **DEFENDANT JOHNSON:** Great.

2           **MS. MARTIN:** And, Your Honor, as for the defendants  
3 saying that they haven't had a chance to get legal materials or  
4 have access to the mails, I would note that there was a motion  
5 filed by the defendants, or at least one of the defendants, a  
6 week or two ago contesting jurisdiction. So that seems to not  
7 be the case.

8           **DEFENDANT HEINEMAN:** That would be outgoing mail  
9 from us to somewhere, not coming from you to us. That is what  
10 we are talking about, specifically.

11           **THE COURT:** Well, on the specifics of this  
12 particular motion, you each now have in your hand the same  
13 material that I have. I ask you to, please. go to a quiet place  
14 where the marshals will take you, and you read the materials  
15 and then come back in half an hour, and we will hear the  
16 motion. All right?

17           **MS. MARTIN:** Yes, Your Honor.

18           **THE COURT:** Thank you.

19           Since no one is here on the Fuentez matter, we are  
20 just going to take a thirty-minute recess because there is no  
21 other matter on the calendar except for this one.

22                           **(Recess taken at 2:15 p.m.; proceedings**  
23                           **resume at 2:57 p.m.)**

24           **THE COURT:** Please be seated. Thank you.

25           All right. Everyone can be seated.

1           Why don't you come up here.

2           Everyone is back. The defendants are back. It's  
3 now a few minutes, three minutes till 3:00; did you get a  
4 chance to read the document?

5           **DEFENDANT JOHNSON:** Yeah.

6           **THE COURT:** Ready to go forward?

7           **DEFENDANT HEINEMAN:** Sure.

8           **THE COURT:** This a memorandum and motion by the  
9 Government.

10          Ms. Martin you go first. Tell us what your motion  
11 is.

12          **MS. MARTIN:** Your Honor, this is a motion addressing  
13 restitution. The Government asks that restitution be imposed  
14 upon the defendants, Heineman and Johnson, jointly and  
15 severally, in the amount of \$512,911.63.

16          The Government, through its witness program, has  
17 reached out to 585 victims in the case that we have identified,  
18 and attempted to get information and -- from the victims and  
19 asked the victims to identify and give supporting evidence of  
20 their losses. The 20 individuals, or 19 individuals and the  
21 banks listed in this memorandum were the victims that the  
22 Government was able to come up with adequate evidence to  
23 support the losses.

24          This, of course, does not account for all the  
25 losses, but, under the mandatory Victims' Restitution Act,

1 restitution for identified losses of victims must be provided  
2 to those victims and ordered, regardless of defendant's ability  
3 to pay. And that is why these are listed here.

4 There was a community restitution portion that might  
5 take into account defendants' ability to pay, so here we have  
6 only included the identified losses of individuals.

7 **THE COURT:** All right. Let's hear from Mr. Heineman.

8 **DEFENDANT HEINEMAN:** Well, we have a problem with  
9 the victims. Actually, the victims were not identified in the  
10 indictment. None of these people are -- here -- are actually  
11 in the indictment as victims. Not sure how we make the move  
12 from financial institutions, lenders, and others into these  
13 people. And we made this clear, very early on in this case, in  
14 front of Judge Larson and even in front of the prosecution  
15 prior to trial. So, we have a problem with these victims.

16 **THE COURT:** All right, Ms. -- let's pause over that  
17 point.

18 Mr. Heineman is saying that the indictment called  
19 out the banks as the victims, or it was at least the defrauding  
20 party was the banks, but you have included Peggy Ryan and some  
21 others as victims; so what is your answer to that?

22 **MS. MARTIN:** That's correct, Your Honor. Under the  
23 mandatory Victim Restitution Act, specifically, 18 U.S.C. §  
24 3663(a) subsection (a)(2), which I did put in the memorandum,  
25 the definition of a victim is "a person directly and proximally



1 harmed as a result of the commission of an offense for which  
2 restitution may be ordered, including in the case of an offense  
3 that involves as an element, a scheme, conspiracy or pattern of  
4 criminal activity, any person directly harmed by the  
5 defendant's criminal conduct in the course of the scheme,  
6 conspiracy or pattern."

7 Furthermore, the defendants were convicted of money  
8 laundering and conspiracy to commit money laundering. And, one  
9 element of mail fraud is a scheme or artifice to defraud. And  
10 thus, under the statute, this would be a crime where any  
11 victims of that scheme would be covered, even if it's not  
12 specifically somebody who was affected by one of the instances  
13 of mail fraud that were charged in this case.

14 There are Ninth Circuit cases that direct that --  
15 **United States versus Mayes**, for example, is a Ninth Circuit  
16 case that says that mail fraud and conspiracy to commit mail  
17 fraud would be subject to this, this definition.

18 **THE COURT:** All right.

19 Mr. Heineman what else would you like to say?

20 **DEFENDANT HEINEMAN:** I'll defer to Mr. Johnson.

21 **THE COURT:** Mr. Johnson, what would you like to say?

22 **DEFENDANT JOHNSON:** The first thing I want to  
23 address is, in our trial, you didn't define what money was, so  
24 I'm wondering what definition we are going to use.

25 **THE COURT:** Please, Mr. Johnson.

1           **DEFENDANT JOHNSON:** Are we just going to use  
2 "undefined financial obligations"? Then, for the sake of  
3 continuity, I'll refer to them as UFOs. And the first thing  
4 that I hear is that I recall in paragraph 4 that the scheme or  
5 artifice was to defraud financial institutions, lenders, and  
6 others. It sounds to me, based on what he is saying, and,  
7 again, I haven't had a chance to do the research, but sounds to  
8 me that the nexus is the scheme or artifice in order to attach  
9 to some kind of victims. Otherwise, I guess you could just  
10 throw anybody into a -- into a restitution-type situation.

11           But, I'm not sure what the nexus is to these victims  
12 if we are going to make it the scheme because a same scheme is  
13 clearly delineated to financial institutions, lenders, or  
14 others. If you are saying that these are the "others," that's  
15 find, but that is not -- you know, I don't know how they got  
16 the nexus to the scheme, so that probably a little  
17 clarification on that might be good.

18           **THE COURT:** Well, I know the answer to that, because  
19 I have been with this case from day one and sat through the  
20 entire trial. And this is very clear, and the Court now finds  
21 that while the indictment called out the banks as a victim of  
22 the fraud for purposes of the mail fraud statute, the scheme in  
23 question also depended on getting these people like Peggy McCay  
24 and Peggy Ryan, and so forth, to fall for the notion that their  
25 debt and mortgage could be eliminated.

1           **DEFENDANT JOHNSON:** Sounds to me --

2           **THE COURT:** Wait.

3           And that while they -- you had them get their  
4 approval to sign off on these indictments, and by their -- I  
5 mean Peggy McCay and the other individuals victims, so that you  
6 could then present paperwork to the bank.

7           Now, in understanding the way this scheme worked,  
8 the individuals were led to believe, by you, that this was a  
9 legitimate method for eliminating their mortgage, when, in  
10 fact, it was completely bogus. It had no validity whatsoever  
11 in law or in practice, and never once did it eliminate  
12 anybody's mortgage. So, these individuals were defrauded just  
13 as much as the bank was defrauded. So that's what the Court  
14 finds. And that's why all of these other individuals are  
15 listed here. They are victims, too, at least within the  
16 meaning of the statute.

17           **DEFENDANT JOHNSON:** Sounds to me like you are  
18 identifying maybe a separate scheme. But, if you are going off  
19 the indictment, the scheme and artifice, and, if I understand  
20 the elements of your statute, or your code, is that the scheme  
21 had to be furthered through the mails. If the scheme was to  
22 defraud financial institutions and the furtherance of the mails  
23 was the jurisdictional hook that you guys claim, I don't see  
24 the nexus between that particular part of the element of your  
25 code and these particular victims.

1           **THE COURT:** Well, I've said it as best as I can.

2       The nexus was that in order to defraud the banks and position  
3       yourself so that you could go for round two, which was the  
4       refinancing, you needed to get first to defraud these  
5       individuals into thinking that you had a way to eliminate their  
6       mortgage. So, it was a two-step, three-step process with fraud  
7       at every turn. So the nexus is quite clear.

8           **DEFENDANT JOHNSON:** Okay.

9       Now, my other concern, then, is that I believe  
10      Mr. Flores put \$90 million as part of our -- part of our PSR  
11      report, and I'm wondering this -- why this number is so low.

12          **THE COURT:** If you want us to raise it --

13       I think the Government is basing this on what people  
14      submitted, right?

15          **MS. MARTIN:** That's correct, Your Honor, and  
16      evidence that we had in our possession.

17          **THE COURT:** So, the source of the evidence is -- and  
18      what they had to work with in the two instances -- were  
19      different.

20          **DEFENDANT JOHNSON:** What's the source of this  
21      90 million?

22          **THE PROBATION OFFICER:** If I can speak to that, Your  
23      Honor?

24       The number is actually 50,000,679, 547 which  
25      represented the 258 clients that all four of the defendants who

1 were convicted at -- well, let me back up.

2           These two defendants obviously didn't admit; they  
3 went to trial and still denied their culpability. But the face  
4 value of the mortgages that were submitted, which were admitted  
5 to in the Julian and in LeCompte individual plea agreements,  
6 add up to that particular number.

7           The -- I'm not sure where the 90 million comes from.  
8 I think one of them had restitution of about 90,000. Maybe  
9 that's what the defendant is referring to.

10           I have the pre-sentence reports here in front of me  
11 for Mr. Johnson and Mr. Heineman. I don't have Julian's or  
12 LeCompte, but the offense conduct should be identical in all of  
13 these.

14           **THE COURT:** And what was the number, 50 million?

15           **THE PROBATION OFFICER:** Yeah. In fact, let me just  
16 say -- I'll read directly from here. It says the amount of  
17 intended losses in the plea agreements for co-defendant,  
18 LeCompte, Julian and Tobias was approximately 50,679,547. So  
19 that number of 50 million, which is the number that the  
20 Probation Office used to establish Heineman and Johnson's  
21 increase for intended loss, which is a 24 level increase, comes  
22 from the face value of the mortgages related to -- excuse me,  
23 related to LeCompte, Julian and Tobias. And I can share a copy  
24 of the report with the --

25           **THE COURT:** You've already done all that in the

1 past. But the -- so that was the method you used to come up  
2 with the 50 million.

3 **THE PROBATION OFFICER:** That is intended loss, which  
4 is for purposes of Guideline computations. The numbers  
5 presented here are actual loss.

6 **THE COURT:** Well, actual loss that was submitted by  
7 individuals?

8 **MS. MARTIN:** Correct, the actual loss.

9 **THE COURT:** The vast majority of individuals did not  
10 submit any paperwork, I'm assuming.

11 **MS. MARTIN:** That's correct.

12 **THE COURT:** So that counts for a difference in  
13 results.

14 **DEFENDANT JOHNSON:** I think it's the belief of this  
15 Court that law and equity, having mentioned in your court a  
16 long time ago -- it just doesn't seem equitable to stay at this  
17 number. If you are saying it's 50 million there and there is a  
18 -- this new victim has got losses, and you're saying that there  
19 is only 20 here and there is hundreds or thousands, the numbers  
20 just don't add up.

21 **THE COURT:** Well, the difference is the difference  
22 between intended loss, which your scheme involving hundreds and  
23 hundreds of people, was in the aggregate intended to effect  
24 \$50 million. So that is one number, and that's the number that  
25 was used. What your intent was, the grand scheme of your

1 intent, was \$50 million.

2 The number of people who actually have submitted  
3 paperwork to show what they had lost, so we can say cut this  
4 person a check for \$1500, is a much smaller number. They  
5 weren't required by law, and the Government can't go out and  
6 twist their arm to make them submit paperwork. So, the people  
7 who submitted paperwork comes to a much smaller number. But  
8 that, in no way takes away from the fact that your intended  
9 loss, which is what we look at for purposes of sentencing, was  
10 a much bigger number.

11 So there is no inconsistency.

12 **DEFENDANT JOHNSON:** It appears to me, then, that if  
13 the purpose of equity is to make a person whole and you're  
14 saying 50 million here, and I don't know, let's round this up  
15 \$10 million, that 60 million would be more appropriate.

16 **THE COURT:** I'm going to go with what the Government  
17 has come up with here. I wouldn't know who to give that money  
18 to. Who would I give it to?

19 **DEFENDANT JOHNSON:** I don't know, you managed to  
20 come up with 50 million here, and, I mean, we've been going  
21 through this, I guess this circle jerk of who the victims are,  
22 of people for years now. And, you guys always seem to come up  
23 with numbers. And, we are actually at the point of equity, and  
24 I say let's pay everybody off, you have no problem figuring  
25 out, you know, who, when it comes to sentencing, who it comes

1 to giving money away, let's pay everybody off, that's what  
2 equity is.

3 **THE COURT:** Let me change the subject.

4 Is there anything you can report that you don't have  
5 to reveal any confidential things, but anything you have with  
6 you publicly on whether you are ever going to get any of that  
7 money back from Latvia?

8 **MS. MARTIN:** From Latvia, we are less than hopeful.  
9 I think it's unlikely from Latvia. And, we are investigating  
10 the possibilities of other sources, and we are very hopeful  
11 about that.

12 **THE COURT:** Okay.

13 **DEFENDANT JOHNSON:** What about the money you already  
14 seized, the 228,000.

15 **MS. MARTIN:** With regard to the money that the  
16 Government already seized a few years ago, I believe there was  
17 \$178,000 from a Bank of America bank account. That money was  
18 seized pursuant to an agency seizure, and so, it's already gone  
19 through the channels. And once it's been a year or two, the  
20 money is already designated and earmarked from that agency.  
21 So, that was an FBI seizure. And, unfortunately, we have done  
22 everything we can to check and see if that can be applied to  
23 pay restitution to these victims, and it can't. And  
24 additionally, that money under the Mandatory Victim Rights Act  
25 -- the fact that the money was seized and can't now be applied



1 -- should not in any way affect the defendant's payment of this  
2 amount of restitution.

3 **DEFENDANT JOHNSON:** But, that money was seized from  
4 the Dorian Group, which has been dismissed, I understand?

5 **THE COURT:** Well, you were the Dorian Group.  
6 But what is the code section that says that money  
7 can't be used?

8 **MS. MARTIN:** I think I have a case on that,  
9 actually, Your Honor. It's United States versus John Doe. And  
10 it's a Ninth Circuit case, 37 4 F. 3rd 851 from 2004.

11 In that case, the defendant, his home was forfeited  
12 and the proceeds from that taken. And then, he was later  
13 ordered to pay restitution. And he wanted to apply the  
14 proceeds from the home to that amount of restitution and have  
15 it offset, and the Court in that case said there can be no  
16 offset for the amount that was already forfeited and seized.

17 **DEFENDANT JOHNSON:** How would that apply if the  
18 defendant was acquitted? I mean, the Dorian Group has not been  
19 -- you know, you had your day in court to deal with him, you  
20 didn't.

21 **THE COURT:** Look, you are the Dorian Group, that's  
22 easy.

23 **DEFENDANT JOHNSON:** I believe it was a separate  
24 defendant.

25 **THE COURT:** Well, I guess the reason they didn't go

1 after the Dorian Group is they realized that you and  
2 Mr. Heineman were the Dorian Group. That one is not hard.

3 **DEFENDANT JOHNSON:** What about Universal Trust  
4 Services?

5 **THE COURT:** I don't remember it well enough to  
6 comment on that right now.

7 **DEFENDANT JOHNSON:** The Dorian Group is  
8 identified --

9 **THE COURT:** You two were the brains and the muscle  
10 and everything else that went into this scheme.

11 **DEFENDANT JOHNSON:** The Dorian Group is identified  
12 in the document as four fictional entities; it doesn't identify  
13 him and myself. So --

14 **DEFENDANT HEINEMAN:** Or doing business as --

15 **DEFENDANT JOHNSON:** So, to me, it was completely  
16 identified separately; it was charged separately and treated  
17 separately. It had its own arraignments. And so, I just find  
18 it interesting that it gets dismissed and it still gets its  
19 money seized.

20 **THE COURT:** All right, anything more on this motion?

21 **MS. MARTIN:** Just finally, Your Honor, that the  
22 Government wants to just restate, again, that it would like --  
23 it would ask the Court to impose joint and several restitution  
24 on these two defendants, but that would be separate from the  
25 restitution that has already been imposed for the --

1           **THE COURT:** What finding specifically do I need to  
2 make other than what I have already made?

3           **MS. MARTIN:** No other factual findings, Your Honor.

4           **DEFENDANT JOHNSON:** I think it would be fair to have  
5 the restitution of the other guys applied to us, too.

6           **THE COURT:** They have their own list of people. I  
7 have checked, and they don't overlap, right?

8           **MS. MARTIN:** That's correct.

9           **THE COURT:** Okay. The Court is going to grant the  
10 motion. The Court will order that the two defendants, Heineman  
11 and Johnson, be jointly and severally liable for the  
12 restitution in the amount of \$512,912.63 to Bank of America and  
13 the others listed in the list of 20 that appear at pages 3 and  
14 4 of the Government's memo dated June 5, 2008.

15           **MR. HALL:** We asked the Court, I think, to make that  
16 due and payable now or immediately.

17           **THE COURT:** Due and payable now, yes.

18           **MS. MARTIN:** I just wanted to clarify one thing.  
19 There is one overlap victim between -- I believe it's the  
20 Julian or LeCompte restitution order, and here his name is  
21 Albaliso Herrera, H-e-r-r-e-r-a, but that overlap is  
22 purposeful. There was another amount of money that was paid to  
23 one of the other defendants in the amount of \$3000, but -- and  
24 that's on another defendant's restitution order, but the amount  
25 here, on the defendant's restitution order, was a refinance

1 cash amount that was wired to Latvia. So, that is why that  
2 name does appear on two restitution lists. I just wanted to  
3 point that out so there wouldn't be confusion.

4 **THE COURT:** All right. Nonetheless, there is no  
5 doubt in the Court's mind that all of these should be joint and  
6 several, with these two -- as between these two defendants.

7 **DEFENDANT JOHNSON:** And who is going to be acting as  
8 fiduciary for --

9 **THE COURT:** Fiduciary for who?

10 **DEFENDANT JOHNSON:** For this payment.

11 **THE COURT:** Well, doesn't the form of judgment say  
12 you got to pay these people directly? Or does it get paid to  
13 the Court and then the Court pays? How does that work?

14 **MR. HALL:** I believe it gets paid to the Court, Your  
15 Honor.

16 **THE COURT:** All right. So the U.S. District Court  
17 Clerk will be the fiduciary to whom you pay the money, and  
18 then, the Court will make sure that it gets distributed to  
19 these people, per the order.

20 **DEFENDANT JOHNSON:** Can he issue us a 1099 today,  
21 then?

22 **THE COURT:** There is no 1099 involved. So 1099s --  
23 this has nothing to do with 10999s.

24 **DEFENDANT JOHNSON:** So, there is no certificate of  
25 abandonment, or anything, that is related to this?

1           **THE COURT:** I have no idea what you are talking  
2 about.

3           **DEFENDANT JOHNSON:** Okay.

4           **THE COURT:** So, I guess the answer is no.

5           **DEFENDANT JOHNSON:** So we are not going to get a  
6 1099, today, for that amount?

7           **MS. MARTIN:** No.

8           **THE COURT:** Do you have any idea what Mr. Johnson is  
9 talking about?

10          **MS. MARTIN:** There is no documentation further than  
11 what we have done today than what the Government is required to  
12 give the defendants.

13          **THE COURT:** This is going to be a plain-old order of  
14 the Court. And this, will then be part of your judgment, the  
15 order of the Court. If they were ever to discover that you had  
16 some money, they would then use the order of the Court to go  
17 out and garnish it or seize it. They don't need 1099s to do  
18 that.

19          **DEFENDANT JOHNSON:** While I'm here, I would like all  
20 the E-filings that have been in this case to be uploaded to the  
21 hard drives that Steve has for the purposes of appeal.

22               That's a problem?

23          **THE COURT:** That is on the jurisdiction of the U.S.  
24 Court of Appeals for the Ninth Circuit. Please direct any and  
25 all requests like that to them.

1           **DEFENDANT JOHNSON:** Sure.

2           **THE COURT:** I am no longer the steward for making  
3 sure that your appeal is done properly, that is up to them,  
4 though I made great efforts on your behalf to give you the  
5 fairest possible procedure. I don't have jurisdiction over  
6 that anymore. And you have to ask the Ninth Circuit to assist  
7 you with that, all right?

8           **MS. MARTIN:** Last, but not least, Your Honor, the  
9 Government would like to ask that you take the binder  
10 submission and file it under seal, just so there is a record of  
11 what we looked at today. But, we ask that it be under seal  
12 because it does have bank account information.

13           **THE COURT:** I'm handing it to the clerk, who will  
14 put it under seal for that purpose.

15           **MS. MARTIN:** And the Government will send, even  
16 though it has sent these materials prior, will send one more  
17 version, redacted version, to the defendants so they have a  
18 copy themselves.

19           **THE COURT:** What happened to the copies they gave  
20 them?

21           **MS. MARTIN:** What they are holding are not redacted,  
22 so I would like to take those back and redact them.

23           **THE COURT:** The information will be redacted as  
24 what?

25           **MS. MARTIN:** The bank account information and --

1           **MR. HALL:** Home addresses.

2           **MS. MARTIN:** Well, home addresses will be redacted  
3 as well.

4           **THE COURT:** I want to say there is certainly good  
5 cause to do that because these two defendants would possibly  
6 take that identifying information and perpetrate another fraud  
7 of some type.

8           **DEFENDANT JOHNSON:** You have a great imagination.

9           **THE COURT:** Well, not as good as yours.

10          **DEFENDANT JOHNSON:** I don't think so.

11          **THE COURT:** That motion is granted.

12          **MS. MARTIN:** Thank you, Your Honor.

13          **THE COURT:** Anything more?

14          **MS. MARTIN:** Nothing further with the Government.

15          **DEFENDANT JOHNSON:** Are we finished with you?

16          **THE COURT:** You are done. You will now have the  
17 opportunity to argue your points before three judges of the  
18 United States Court of Appeals.

19          **DEFENDANT JOHNSON:** Let's hope it gets better.

20                   (Proceedings adjourn at 3:22 p.m.)

21  
22                   ---o0o---

CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Sahar McVickar

Sahar McVickar, RPR, CSR No. 12963

August 26, 2008

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